

# OPEN MEETING AGENDA ITEM



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Green Choice Solar

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Arizona Corporation Commission, AZ CORP COMMISSION

DOCKETED

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Commissioner Gary Pierce  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

JUN 21 2010

DOCKETED BY

Re: Commissioner Gary Pierce's Letter to Interested Stakeholders Regarding  
SolarCity's Application for Determination of Non-Public Service Corporation  
Status (Docket No. E-20690A-09-0346)

Dear Commissioner Pierce:

Green Choice Solar ("GCS"), headquartered in Scottsdale, is a developer, designer, installer and financier of solar-distributed energy systems. GCS is focused on solar PV installations for the commercial (i.e., K-12 schools, commercial buildings and small businesses) and residential markets in Arizona. My company, like other full-service solar providers, is greatly affected by the outcome of the SolarCity adjudication case. GCS enthusiastically supports your amendment to reverse the Administrative Law Judge's recommended order. As such, I am happy to provide our comments to your docketed amendment.

GCS offers various financing choices for its customers to acquire the energy output from solar PV systems, including purchasing or leasing the equipment, or entering into a Solar Service Agreement (SSA). As you know, schools, governmental entities and non-profit organizations are unable to take advantage of the federal tax incentives under the purchase or leasing options. With an SSA, solar providers can pass along these savings to customers who would not otherwise qualify under the IRS code.

GCS does not believe — based on the testimony and exceptions filed by RUCO, SolarCity and Western Resource Advocates — that full-service solar providers are acting as a public service corporation pursuant to the Arizona State Constitution when entering into SSAs with their governmental and nonprofit customers. Furthermore, the *Serv-Yu* legal test does not support Commission regulation of SolarCity and other full-service solar companies.

Your amendment does an excellent job of articulating the legal rationale that SolarCity does not pass the two-part test for public service corporations. Moreover, as you emphasize in your amendment, no functional difference exists between a lease agreement and an SSA, and as a result, no jurisdictional question should exist either.

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As SolarCity testified in the hearing, SSAs are an essential financing vehicle to further the growth of distributed solar energy in Arizona. Any type of regulation by the Commission will have a damaging effect on APS and TEP in meeting the non-residential DE requirement of the RES Rules. In fact, Jeffrey Gaia, Chairman and CEO of the Biltmore Bank of Arizona, officially asserted that his bank will not participate in SSA-financed projects should the Commission decide that regulation is needed (letter docketed on June 10, 2010). I would assume other lending institutions and tax equity investors would also shy away from this risk-laden proposition.

New regulation by the Commission, with its burdensome filing requirements and long waiting times for approvals, will increase costs for our customers and appreciably slow the installation of distributed solar in Arizona. The public interest in regulating SSAs is not justified and will have grave unintended consequences for the deployment of solar systems on schools, government entities and non-profit organizations. Therefore, we urge the Commissioners to adopt the Pierce Amendment and find that the use of SSAs does not trigger Commission rate regulation.

Yours truly,



Herbert Abel  
Chief Executive Officer

Cc: Chairman Kristin Mayes  
Commissioner Sandra Kennedy  
Commissioner Paul Newman  
Commissioner Bob Stump